

KEVIN J WORTHEN, *President*  
BRIGHAM YOUNG UNIVERSITY



November 19, 2021

***Via Certified Mail***

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
UNITED STATES DEPARTMENT OF EDUCATION  
400 Maryland Avenue, SW  
Washington, D.C. 20202

**Re: Brigham Young University's Notice of Religious Exemption to Title IX Requirements**

Dear Ms. Lhamon:

I write in response to the letter we received from the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) dated October 21, 2021, regarding a complaint filed with OCR on March 9, 2020 (Complaint) (OCR Case No. 08-20-2196). We affirm the religious protections that the United States Constitution, Title IX of the Education Amendments of 1972 (Title IX), and other laws provide to Brigham Young University (BYU), and we assert our religious exemption with respect to any application of Title IX relating to sexual orientation and gender identity that is not consistent with the religious tenets of The Church of Jesus Christ of Latter-day Saints (the Church of Jesus Christ).

BYU is a religious institution of higher education in Provo, Utah, "founded, supported, and guided by" the Church of Jesus Christ.<sup>1</sup> Although BYU is a nonprofit corporation, BYU is part of the Church Educational System, which includes many other institutions and programs affiliated with the Church of Jesus Christ. BYU's unique mission is "to assist individuals in their quest for perfection and eternal life" by "provid[ing] an environment enlightened by living prophets and sustained by those moral virtues which characterize the life and teachings of the Son of God."<sup>2</sup> BYU aims to provide an education that is spiritually strengthening, intellectually enlarging, and character building, leading to lifelong learning and service. In striving for these aims, "the common purpose of all education at BYU [is] to build testimonies of the restored gospel of Jesus Christ."<sup>3</sup> All BYU students, faculty, administrators, and staff agree to the Church Educational System Honor Code and thereby "voluntarily commit to conduct their lives in accordance with the principles of the gospel of Jesus Christ."<sup>4</sup>

We reaffirm that the First Amendment to the U.S. Constitution protects the autonomy of religious institutions, including BYU, to be free from government involvement in the teaching or practice of religion, and from excessive entanglement with their religious affairs. Further, federal law prohibits the government from imposing any substantial burden on our religious free exercise that is not the least restrictive means of meeting a compelling government interest.

Title IX "is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance." 34 C.F.R. § 106.1.

<sup>1</sup> BYU Mission Statement, <https://aims.byu.edu/byu-mission-statement>.

<sup>2</sup> *Id.*

<sup>3</sup> Aims of a BYU Education, <https://aims.byu.edu/aims-of-a-byu-education>.

<sup>4</sup> Church Educational System Honor Code, <https://policy.byu.edu/view/church-educational-system-honor-code>.



November 19, 2021

Page 2

BYU maintains that the text, structure, purpose, and history of Title IX make clear that the term “sex” is not ambiguous and refers only to biological differences between males and females, and therefore Title IX does not apply to discrimination “on the basis of” sexual orientation or gender identity. But regardless of the scope of the term “sex” in the statute, one important exception is that Title IX “shall not apply to an educational institution which is controlled by a religious organization if the application [of Title IX] would not be consistent with the religious tenets of such organization.” 20 U.S.C. § 1681(a)(3). ED has clarified that religious institutions may—but are not required to—seek assurance of a religious exemption by asserting the exemption in writing to ED. 34 C.F.R. § 106.12.

As ED has repeatedly recognized, BYU is “controlled by” the Church of Jesus Christ, whose governing leaders appoint prophets, apostles, general authorities, and officers of the Church of Jesus Christ as members of BYU’s Board of Trustees. Also, a majority of BYU’s operating budget is derived from appropriations from the Church of Jesus Christ. Therefore, because BYU is controlled by the Church of Jesus Christ, BYU is exempt from any Title IX requirements that are inconsistent with religious tenets of the Church of Jesus Christ.

In this case, the Complaint alleges that BYU’s application of the Honor Code to its campus community violates OCR’s Title IX policies. Specifically, the Complaint refers to a letter dated March 4, 2020, from Elder Paul V. Johnson, a General Authority Seventy of the Church of Jesus Christ and then-current Commissioner of the Church Educational System, to students, faculty, and staff.<sup>5</sup> The Complaint asserts that OCR’s interpretation of Title IX is inconsistent with the Honor Code, which incorporates religious tenets of the Church of Jesus Christ regarding marriage, family, chastity, gender, and divine identity.<sup>6</sup> OCR has previously recognized that “BYU’s Code of Honor . . . is derived from religious tenets of the Church of Jesus Christ,” and that where “treatment of employees and students would conflict with the religious tenets of the Church of Jesus Christ . . . , BYU is granted an exemption from those requirements.”<sup>7</sup> BYU is, therefore, exempt from any requirements under Title IX that may relate to sexual orientation or gender identity to the extent that those requirements are inconsistent with religious tenets of the Church of Jesus Christ, as reflected in the Honor Code.<sup>8</sup>

The Church of Jesus Christ teaches that “[a]ll human beings—male and female—are created in the image of God,” and that “[e]ach is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny.” The Church of Jesus Christ also teaches that “[g]ender is an essential characteristic of individual premortal, mortal, and eternal

<sup>5</sup> Letter from Elder Paul V. Johnson to Students, Faculty, and Staff of the Church Educational System (Mar. 4, 2020), attached as **Exhibit 1**. Copies of the Honor Code effective in 2020 and 2021 are attached as **Exhibits 2** (current) and **3** (old).

<sup>6</sup> See *The Family: A Proclamation to the World*, The Church of Jesus Christ of Latter-day Saints (“The Family: A Proclamation to the World”), attached as **Exhibit 4**, <https://www.churchofjesuschrist.org/study/scriptures/the-family-a-proclamation-to-the-world/the-family-a-proclamation-to-the-world>.

<sup>7</sup> Letter from Martin H. Gerry, OCR Dir., to Dallin H. Oaks, BYU Pres. (Aug. 12, 1976), attached as **Exhibit 5**.

<sup>8</sup> Neither the Complaint nor OCR’s letter identifies any provision or specific requirement under Title IX that BYU is allegedly violating. Nonetheless, BYU would be exempt from any Title IX requirements related to sexual orientation or gender identity to the extent that those requirements conflict with the Church of Jesus Christ’s religious tenets as applied to individuals’ behavior/conduct (as opposed to status/identity), including without limitation, provisions regarding admission (34 C.F.R. § 106.21–22), student recruitment (*id.* § 106.23), education programs or activities (*id.* § 106.31), housing (*id.* § 106.32), comparable facilities (*id.* § 106.33), access to classes and schools (*id.* § 106.34), counseling (*id.* § 106.36), financial assistance (*id.* § 106.37), employment assistance to students (*id.* § 106.38), health and insurance benefits and services (*id.* § 106.39), marital or parental status (*id.* § 106.40), athletics (*id.* § 106.41), measuring skills or progress in physical education classes (*id.* § 106.43), and employment (*id.* § 106.51–61).



November 19, 2021

Page 3

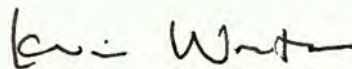
identity and purpose.”<sup>9</sup> The Church of Jesus Christ proclaims “that marriage between a man and a woman is ordained of God and that the family is central to the Creator’s plan for the eternal destiny of His children.”<sup>10</sup> Importantly, “God has commanded that the sacred powers of procreation are to be employed only between man and woman, lawfully wedded as husband and wife,” and “the means by which mortal life is created [are] divinely appointed.”<sup>11</sup>

The Church Educational System Honor Code includes a voluntary commitment by each BYU student and employee to “live a chaste and virtuous life.” As Elder Johnson’s letter explains, “[t]here is and always has been more to living a chaste and virtuous life than refraining from sexual relations outside of marriage.” Referencing the above-stated doctrine of the Church of Jesus Christ, Elder Johnson wrote that “[s]ame-sex romantic behavior cannot lead to eternal marriage and is therefore not consistent with the principles included in the Honor Code.” Thus, any Title IX requirement that BYU must allow same-sex romantic behavior would be inconsistent with religious tenets of the Church of Jesus Christ, and BYU would be exempt from such requirement. Further, BYU also would be exempt from any requirements under Title IX that contradict doctrine of the Church of Jesus Christ regarding the distinction between men and women, the eternal nature of gender, or God’s laws of chastity and marriage.

BYU affirms that the freedom of religion guaranteed by the Constitution and federal law includes the freedom to operate a religious university without sacrificing distinctive religious beliefs or practices. At the same time, BYU welcomes and supports all our students and employees who agree to abide by the tenets of the Church of Jesus Christ, including those who identify as LGBTQ. We acknowledge the complicated realities that many of these individuals experience as they navigate issues surrounding sexual orientation, gender identity, and religious doctrine. The intersection of religious identity and LGBTQ identity—both at an institutional level and an individual level—is complex and nuanced. At BYU, where our religious mission is inextricably bound up in the doctrine of Jesus Christ, we simultaneously stand firm in our religious beliefs and reiterate our love and respect for each member of our campus community. We also applaud and will continue to support ongoing efforts to find common ground on these important issues as we strive to follow Jesus Christ’s example of love and fairness for all of God’s children.<sup>12</sup>

We appreciate your consideration of our religious beliefs and look forward to your response confirming ED’s acknowledgement of our religious exemption, as set forth herein.

Sincerely,



Kevin J Worthen, President  
BRIGHAM YOUNG UNIVERSITY

<sup>9</sup> The Family: A Proclamation to the World.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., Fairness for All Act, H.R. 1440, 117<sup>th</sup> Congress (2021) (protecting LGBTQ rights and religious freedom); NCAA, *Common Ground*, <https://www.ncaa.org/about/resources/inclusion/common-ground>; *BYU Announces New Office of Belonging*, BYU NEWS (Aug. 23, 2021), <https://news.byu.edu/announcements/byu-forms-new-office-of-belonging>.

# **EXHIBIT 1**

March 4, 2020 letter from  
Elder Paul V. Johnson

THE CHURCH OF  
JESUS CHRIST  
OF LATTER-DAY SAINTS

CHURCH EDUCATIONAL SYSTEM  
COMMISSIONER'S OFFICE  
50 East North Temple Street  
Salt Lake City, Utah 84150-0009

March 4, 2020

To students, faculty, and staff of the Church Educational System:

Recently the language of the principle-based Church Educational System Honor Code was updated. Those adjustments included significant doctrinal and behavioral matters that have led to much discussion and some misinterpretation. Out of respect for all concerned, we are providing the following clarifying statement.

One change to the Honor Code language that has raised questions was the removal of a section on "Homosexual Behavior." The moral standards of the Church did not change with the recent release of the *General Handbook* or the updated Honor Code. There is and always has been more to living the Lord's standard of a chaste and virtuous life than refraining from sexual relations outside of marriage. Lasting joy comes when we live the spirit as well as the letter of God's laws.

A foundational doctrine of the restored gospel of Jesus Christ is that "marriage between a man and a woman is ordained of God and that the family is central to the Creator's plan for the eternal destiny of His children" ("The Family: A Proclamation to the World"). Church leaders have long taught these principles.

Same-sex romantic behavior cannot lead to eternal marriage and is therefore not compatible with the principles included in the Honor Code.

We are grateful for the commitment that all students and employees in the Church Educational System make to live the principles and spirit of the Honor Code.

Sincerely,



Elder Paul V. Johnson  
Commissioner, Church Educational System

## **EXHIBIT 2**

**Church Education System Honor Code  
[Approved February 12, 2020]**



## Church Educational System Honor Code

Brigham Young University and other Church Educational System institutions exist to provide an education in an atmosphere consistent with the ideals and principles of The Church of Jesus Christ of Latter-day Saints. That atmosphere is created and preserved by a community of faculty, administration, staff, and students who voluntarily commit to conduct their lives in accordance with the principles of the gospel of Jesus Christ and who strive to maintain the highest standards in their personal conduct regarding honor, integrity, morality, and consideration of others. By accepting appointment, continuing in employment, being admitted, or continuing class enrollment, each member of the BYU community personally commits to observe these Honor Code standards approved by the Board of Trustees “at all times and in all things, and in all places” (Mosiah 18:9):

- Be honest.
- Live a chaste and virtuous life, including abstaining from any sexual relations outside a marriage between a man and a woman.
- Respect others, including the avoidance of profane and vulgar language.
- Obey the law and follow campus policies.
- Abstain from alcoholic beverages, tobacco, tea, coffee, vaping, and substance abuse.
- Participate regularly in Church services (required only of Church members).
- Observe Brigham Young University’s [Dress and Grooming Standards](#).
- Encourage others in their commitment to comply with the Honor Code.

**APPROVED:** 12 Feb 2020

**PRIOR VERSION:** 9 Nov 2015

**APPLICABILITY:** All members of the university community

**POLICY OWNER:** Academic Vice President (for faculty), Administrative Vice President / Chief Financial Officer (for personnel), and Student Life Vice President (for students)

**RESPONSIBLE OFFICE:** Employee Relations (for personnel), Honor Code Office (for students), and Office of the Associate Academic Vice President—Faculty Relations (for faculty)

**RELATED POLICIES:**

- [Dress and Grooming Standards](#)
- [Honor Code Investigation and Administrative Review Process](#)

## **EXHIBIT 3**

**Church Education System Honor Code**  
**[Approved Nov. 5, 2015;**  
**Revised Aug. 13, 2018]**



## Church Educational System Honor Code

Specific policies embodied in the Honor Code include (1) the Academic Honesty Policy, (2) the Dress and Grooming Standards, (3) the Residential Living Standards, and (4) the Continuing Student Ecclesiastical Endorsement Requirement. (Refer to institutional policies for more detailed information.)

- Be honest
- Live a chaste and virtuous life
- Obey the law and all campus policies
- Use clean language
- Respect others
- Abstain from alcoholic beverages, tobacco, tea, coffee, and substance abuse
- Participate regularly in church services
- Observe Dress and Grooming Standards
- Encourage others in their commitment to comply with the Honor Code

As a matter of personal commitment, the faculty, administration, staff, and students of Brigham Young University, Brigham Young University-Hawaii, BYU-I, and LDS Business College seek to demonstrate in daily living on and off-campus those moral virtues encompassed in the gospel of Jesus Christ, and will:

*We believe in being honest, true, chaste, benevolent, virtuous, and in doing good to all men. . . . If there is anything virtuous, lovely, or of good report or praiseworthy, we seek after these things.* (Thirteenth Article of Faith.)

**Honor Code Statement**

Brigham Young University, Brigham Young University-Hawaii, Brigham Young University-Idaho, and LDS Business College exist to provide an education in an atmosphere consistent with the ideals and principles of The Church of Jesus Christ of Latter-day Saints. That atmosphere is created and preserved through commitment to conduct that reflects those ideals and principles. Members of the faculty, administration, staff, and student body at BYU, BYU-H, BYU-I, and LDSBC are selected and retained from among individuals who voluntarily live the principles of the gospel of Jesus Christ. Observance of such is a specific condition of employment and admission. Those individuals who are not members of The Church of Jesus Christ of Latter-day Saints are also expected to maintain the same standards of conduct, except church attendance. All who represent BYU, BYU-H, BYU-I, and LDSBC are to maintain the highest standards of honor, integrity, morality, and consideration of others in personal behavior. By accepting appointment on the faculty, continuing in employment, or continuing class enrollment, individuals evidence their commitment to observe the Honor Code standards approved by the Board of Trustees "at all times and . . . in all places" (Mosiah 18:9).

**Church Educational System Honor Code**



## **Good Honor Code Standing**

Students must be in good Honor Code standing to be admitted to, continue enrollment at, and graduate from BYU. The term “good Honor Code standing” means that a student's conduct is consistent with the Honor Code and the ideals and principles of The Church of Jesus Christ of Latter-day Saints. Excommunication, disfellowshipment, or disaffiliation from The Church of Jesus Christ of Latter-day Saints automatically results in the loss of good Honor Code standing. Further, a student is not in good Honor Code standing if his or her ecclesiastical endorsement has either lapsed or has been withdrawn, or if the Honor Code Office has placed a “hold” on the student's records.

All students, upon admission to BYU, are required to observe the standards of the Honor Code at all times, whether on or off campus. When the Honor Code Office receives reports of misconduct prior to a prospective student's admission or readmission, those reports are referred to the Admissions Office for appropriate action. When the Honor Code Office receives reports of student misconduct after admission or readmission, but before registration for classes, the Honor Code Office typically notifies the student, indicating that a “hold” will be placed on the student's registration if the matter is not resolved to the satisfaction of the Honor Code Office by a specified date. The Honor Code Office also reserves the right to place a “hold” on the record of any student based on reports of student misconduct prior to notifying the student.

## **Conduct**

All students are required to conduct themselves in a manner consistent with the Honor Code. In addition, students may not influence or seek to influence others to engage in behavior inconsistent with the Honor Code.

Students must abstain from the use of alcohol, tobacco, and illegal substances and from the intentional misuse or abuse of any substance. Sexual misconduct; obscene or indecent conduct or expressions; disorderly or disruptive conduct; participation in gambling activities; involvement with pornographic, erotic, indecent, or offensive material; and any other conduct or action inconsistent with the principles of The Church of Jesus Christ of Latter-day Saints and the Honor Code is not permitted.

Violations of the Honor Code may result in actions up to and including separation from the university.

## **Homosexual Behavior**

Brigham Young University will respond to homosexual behavior rather than to feelings or attraction and welcomes as full members of the university community all whose behavior meets university standards. Members of the university community can remain in good Honor



Code standing if they conduct their lives in a manner consistent with gospel principles and the Honor Code.

One's stated same-gender attraction is not an Honor Code issue. However, the Honor Code requires all members of the university community to manifest a strict commitment to the law of chastity. Homosexual behavior is inappropriate and violates the Honor Code. Homosexual behavior includes not only sexual relations between members of the same sex, but all forms of physical intimacy that give expression to homosexual feelings.

### **Dress and Grooming Standards**

The dress and grooming of both men and women should always be modest, neat, and clean, consistent with the dignity adherent to representing The Church of Jesus Christ of Latter-day Saints and any of its institutions of higher education.

Modesty and cleanliness are important values that reflect personal dignity and integrity, through which students, staff, and faculty represent the principles and standards of the Church. Members of the BYU community commit themselves to observe the following standards, which reflect the direction of the Board of Trustees and the Church publication *For the Strength of Youth*. The Dress and Grooming Standards are as follows:

#### **Men**

A clean and well-cared-for appearance should be maintained. Clothing is inappropriate when it is sleeveless, revealing, or form fitting. Shorts must be knee-length or longer. Hairstyles should be clean and neat, avoiding extreme styles or colors, and trimmed above the collar, leaving the ear uncovered. Sideburns should not extend below the earlobe or onto the cheek. If worn, moustaches should be neatly trimmed and may not extend beyond or below the corners of the mouth. Men are expected to be clean-shaven; beards are not acceptable. Earrings and other body piercing are not acceptable. Shoes should be worn in all public campus areas.

#### **Women**

A clean and well-cared-for appearance should be maintained. Clothing is inappropriate when it is sleeveless, strapless, backless, or revealing; has slits above the knee; or is form fitting. Dresses, skirts, and shorts must be knee-length or longer. Hairstyles should be clean and neat, avoiding extremes in styles or colors. Excessive ear piercing (more than one per ear) and all other body piercing are not acceptable. Shoes should be worn in all public campus areas.

### **Residential Living Standards**

As stated in the Honor Code, Brigham Young University is committed to providing a learning atmosphere consistent with the principles of the Church. The university is likewise committed





to creating such an atmosphere for students residing on and off campus and between semesters. To achieve this, BYU has established living standards to help students learn some of the high ideals and principles of behavior expected at Brigham Young University. Therefore, the university requires students to adhere to the following applicable standards:

### **Housing**

All single BYU undergraduate students who are not residing with their parents must live in university on-campus or university-contracted, sex-segregated housing unless specifically excused in writing by the Off-Campus Housing Office.

### **Visiting Hours**

#### **Helaman Halls**

Visitors of the opposite sex are permitted in the lobbies but not in the bedroom area, except during an established open house, at which times room doors must remain open. Lobby visiting hours begin after 8:00 a.m. and extend until 12:00 midnight, Saturday through Thursday. On Friday night, lobby visiting hours extend until 1:30 a.m.

#### **Heritage Halls**

Visitors of the opposite sex are permitted in the lobbies and apartment kitchens but not in bedrooms or bathrooms. Lobby visiting hours are from 8:00 a.m. to 12:00 midnight daily, Saturday through Thursday, and extend until 1:30 a.m. on Fridays. Apartment visiting hours are from 9:00 a.m. to 12:00 midnight Saturday through Thursday, and extend until 1:30 a.m. on Friday.

#### **Off-Campus Visiting Hours, Wyview Park, and Foreign Language Student Residence**

Visitors of the opposite sex are permitted in living rooms and kitchens but not in the bedrooms in off-campus living units, Wyview Park, and the Foreign Language Student Residence. The use of the bathroom areas by members of the opposite sex is not appropriate unless emergency or civility dictates otherwise, and then only if the safety, privacy, and sensitivity of other residents are not jeopardized. Visiting hours may begin after 9:00 a.m. and extend until 12:00 midnight. Friday night visiting hours may extend until 1:30 a.m. Landlords may establish a shorter visiting period if proper notice is given to students.

### **Guests**

All guests of students must comply with the Residential Living Standards while on the premises of university-contracted housing. Students are expected to help their guests and other residents understand and fulfill their responsibility under the Residential Living Standards and



the Honor Code. Approval forms must be submitted for all guest requests, and are available from hall advisors and area offices. Approved guests may stay a maximum of three nights.

### **Maintaining the Standards**

Violations of these standards may be reported to the Honor Code Office, 4440 WSC, (801) 422-2847, or the Off-Campus Housing Office, (801) 422-1513.

### **Continuing Student Ecclesiastical Endorsement**

Students are required to be in good Honor Code standing to be admitted to, continue enrollment at, and graduate from BYU. In conjunction with this requirement, all enrolled continuing undergraduate, graduate, intern, and Study Abroad students are required to obtain a Continuing Student Ecclesiastical Endorsement for each new academic year. Students must have their endorsements completed, turned in, and processed by the Honor Code Office before they can register for fall semester or any semester thereafter. To avoid registration delays, endorsement should be submitted to the Honor Code Office by March 15. Those applying to BYU should use the new-student Admissions Application Part 3 endorsement and submit to Admissions, D-155 ASB.

**LDS students** may be endorsed only by the bishop of the ward (1) in which they live and (2) that holds their current Church membership record.

**Non-LDS students** are to be endorsed by (1) the local ecclesiastical leader if the student is an active member of the congregation, (2) the bishop of the LDS ward in which they currently reside, or (3) the nondenominational BYU chaplain.

**Former LDS students** are not eligible to receive an ecclesiastical endorsement (See Withdrawn Ecclesiastical Endorsement below).

### **Requirements**

Whether on or off campus or between semesters, all students are expected to abide by the Honor Code, which includes (1) the Academic Honesty Policy, (2) the Dress and Grooming Standards, and (3) the applicable Residential Living Standards. Students are required to be in good Honor Code standing to graduate.

LDS students must fulfill their duty in The Church of Jesus Christ of Latter-day Saints, attend Church meetings, and abide by the rules and standards of the Church on and off campus.

Students who are not members of The Church of Jesus Christ of Latter-day Saints are also expected to maintain the same standards of conduct. They are encouraged to participate in services of their preferred religion. All students must be in good Honor Code standing to graduate, to receive a diploma, and to have the degree posted.



### **Withdrawn or Denied Ecclesiastical Endorsement**

An ecclesiastical leader may withdraw a student's endorsement at any time or may decline to endorse a continuing student if the leader determines that the student is no longer eligible for the endorsement. If an endorsement is withdrawn or if a Continuing Student Ecclesiastical Endorsement is denied, no confessional information is exchanged without authorization from the student. The withdrawal of a student's ecclesiastical endorsement automatically results in the loss of good Honor Code standing. Students who are not in good Honor Code standing must discontinue enrollment. Also, they are not eligible for graduation, even if they have otherwise completed all necessary coursework. Excommunication, disfellowshipment, or disaffiliation from The Church of Jesus Christ of Latter-day Saints automatically results in the withdrawal of the student's ecclesiastical endorsement and the loss of good Honor Code standing. Disaffiliation is defined for purposes of this policy as removal of an individual's name from the official records of the Church.

The decision to withdraw an ecclesiastical endorsement or to deny a Continuing Student Ecclesiastical Endorsement may be appealed through appropriate ecclesiastical leaders only. As a matter of practice, BYU does not intervene in ecclesiastical matters or endorsements. However, a student may petition the Dean of Students Office to allow an exception to the ecclesiastical endorsement requirement. As part of the petition, the student must (i) complete an Application for Exception to Policy (this form may be obtained from the Dean of Students Office); (ii) prepare a written statement outlining the reasons why the university should allow an exception; and (iii) within ten business days of receiving notice that the ecclesiastical endorsement has been withdrawn or that a Continuing Student Ecclesiastical Endorsement has been denied, submit the completed application and relevant statements to the Dean of Students Office for consideration.

When considering the petition, the dean of students will determine whether the student has observed and continues to observe the standards of the Honor Code or has demonstrated other sufficiently compelling grounds to warrant an exception to the university's ecclesiastical endorsement requirement. The dean of students will not review the ecclesiastical leader's decision to withdraw or deny endorsement or the process for reaching that decision. The dean of students and other university officials will not discuss confidential matters with the student's present or former ecclesiastical leaders unless the student voluntarily signs a release allowing that communication. The dean of students may also choose to personally interview the student, who may further explain the circumstances which might justify an exception to the ecclesiastical endorsement requirement. The student bears the burden of persuasion that he or she should be considered to be in good Honor Code standing, notwithstanding the lack of an ecclesiastical endorsement. The dean of students' decision regarding the petition will be reviewed by the vice president of student life if requested by the student. The decision by the vice president of student life is final.





The Admission Policy provides a separate Application for Exception process for applicants who cannot obtain an ecclesiastical endorsement in support of their application for admission to the university.

[Approved 9 Nov 2015; Revised 13 Aug 2018; Prior Version 9 Apr 2014]

**APPLICABILITY:** All members of the university community

**IMPLEMENTING PROCEDURES:** Honor Code Investigation and Administrative Review Process

**RESPONSIBLE UNIVERSITY OFFICER:** Student Life Vice President (for students), Administrative Vice President and Chief Financial Officer (for personnel), and Academic Vice President (for faculty)

**RESPONSIBLE UNIVERSITY OFFICE:** Honor Code Office (for students), Human Relations (for personnel), and Office of the Associate Academic Vice President for Faculty (for faculty)

**RELATED UNIVERSITY POLICIES:**

- Academic Honesty Policy
- Adjunct Faculty Policy
- Administrative and Staff Employment Policy
- Administrative and Staff Leaves Policy
- Administrative and Staff Employment Policy
- Admissions Policy
- Child Protection Policy
- Discrimination Complaint Procedures
- Drug-Free School Policy
- Drug-Free Workplace Policy
- Faculty Hiring Policy
- Faculty Discipline and Termination Policy
- Faculty Leaves Policy
- Financial Conflict of Interest in Sponsored Research Policy
- Non-CFS Track Faculty Appointments Policy
- Nondiscrimination and Equal Opportunity Policy
- Personnel Conduct Policy
- Post-doctoral Employment Policy
- Post-retirement Employment Policy
- Rank and Status Policy
- Research Personnel Policy
- Sex Offender Investigation and Review Process
- Sex Offender Policy
- Sexual Misconduct Policy

## **EXHIBIT 4**

### **The Family – A Proclamation to the World**

---

# THE FAMILY

---

## A PROCLAMATION TO THE WORLD

---

### THE FIRST PRESIDENCY AND COUNCIL OF THE TWELVE APOSTLES OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

*W*E, THE FIRST PRESIDENCY and the Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, solemnly proclaim that marriage between a man and a woman is ordained of God and that the family is central to the Creator's plan for the eternal destiny of His children.

ALL HUMAN BEINGS—male and female—are created in the image of God. Each is a beloved spirit son or daughter of heavenly parents, and, as such, each has a divine nature and destiny. Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose.

IN THE PREMORTAL REALM, spirit sons and daughters knew and worshipped God as their Eternal Father and accepted His plan by which His children could obtain a physical body and gain earthly experience to progress toward perfection and ultimately realize their divine destiny as heirs of eternal life. The divine plan of happiness enables family relationships to be perpetuated beyond the grave. Sacred ordinances and covenants available in holy temples make it possible for individuals to return to the presence of God and for families to be united eternally.

THE FIRST COMMANDMENT that God gave to Adam and Eve pertained to their potential for parenthood as husband and wife. We declare that God's commandment for His children to multiply and replenish the earth remains in force. We further declare that God has commanded that the sacred powers of procreation are to be employed only between man and woman, lawfully wedded as husband and wife.

WE DECLARE the means by which mortal life is created to be divinely appointed. We affirm the sanctity of life and of its importance in God's eternal plan.

HUSBAND AND WIFE have a solemn responsibility to love and care for each other and for their children. "Children are an heritage of the Lord" (Psalm 127:3). Parents have a sacred duty to rear their children in love and righteousness,

to provide for their physical and spiritual needs, and to teach them to love and serve one another, observe the commandments of God, and be law-abiding citizens wherever they live. Husbands and wives—mothers and fathers—will be held accountable before God for the discharge of these obligations.

THE FAMILY is ordained of God. Marriage between man and woman is essential to His eternal plan. Children are entitled to birth within the bonds of matrimony, and to be reared by a father and a mother who honor marital vows with complete fidelity. Happiness in family life is most likely to be achieved when founded upon the teachings of the Lord Jesus Christ. Successful marriages and families are established and maintained on principles of faith, prayer, repentance, forgiveness, respect, love, compassion, work, and wholesome recreational activities. By divine design, fathers are to preside over their families in love and righteousness and are responsible to provide the necessities of life and protection for their families. Mothers are primarily responsible for the nurture of their children. In these sacred responsibilities, fathers and mothers are obligated to help one another as equal partners. Disability, death, or other circumstances may necessitate individual adaptation. Extended families should lend support when needed.

WE WARN that individuals who violate covenants of chastity, who abuse spouse or offspring, or who fail to fulfill family responsibilities will one day stand accountable before God. Further, we warn that the disintegration of the family will bring upon individuals, communities, and nations the calamities foretold by ancient and modern prophets.

WE CALL UPON responsible citizens and officers of government everywhere to promote those measures designed to maintain and strengthen the family as the fundamental unit of society.

*This proclamation was read by President Gordon B. Hinckley as part of his message at the General Relief Society Meeting held September 23, 1995, in Salt Lake City, Utah.*



## **EXHIBIT 5**

August 12, 1976 letter from  
Martin H. Gerry to Dallin H. Oakes



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20201

August 12, 1976

Mr. Dallin H. Oaks  
President  
Brigham Young University  
Provo, Utah 84602

RECEIVED AUG 16 1976

Dear President Oaks:

I would like to thank you for your hospitality which you and your colleagues extended to members of the Office for Civil Rights (OCR) during their visit to Brigham Young University (BYU) on April 12. I am taking this opportunity to confirm understandings reached during that meeting and to reply to your letter of April 10.

I was pleased to learn from your letter that BYU will follow the regulation which implements Title IX of the Education Amendments of 1972 except to the extent that particular requirements of the regulation "conflict with [your] constitutional rights." As I understand it, this reservation is limited to those portions of the regulation which conflict with religious tenets of the Church of Jesus Christ of Latter-Day Saints. Based on information you have provided to us, we have determined, pursuant to Section 901(a) (3) of Title IX, that BYU is an institution controlled by a religious organization (within the meaning of that Section) and, therefore, eligible for an exemption where the application of Title IX would conflict with religious tenets of the religious organization.

As discussed during the meeting, we disagree as to the scope of authority provided by Title IX. In your view, the regulation exceeds the authority provided in the statute. However, because of the exemption granted herein and your agreement to comply with the regulations in all non-exempt areas, I do not believe any purpose would be served by further pursuing our discussions of this matter at this time.

In my March 17 letter to you, I stated that the regulations ".... do not preclude institutions from imposing standards of morality (so long as those standards apply equally to members of both sexes)." In your April 10 reply you questioned this statement in light of certain specific provisions of the regulation which you cited. I continue to believe that as a general proposition, as long as an institution's rules, regulations and practices do not differ on the basis of sex and are applied in a manner which results in evenhanded treatment of members of both sexes, there will be no conflict with Title IX.



Page 2 - Mr. Dallin H. Oaks

First, let me discuss in a general manner the particular provisions identified in your March 17 letter:

1. The intent of Section 86.21(c) is to prohibit discrimination on the basis of sex in admissions, specifically discrimination stemming from application of different rules to men and women depending on their marital or parental status. In this connection, the Section may address some conditions (i.e. unmarried and pregnant) which only women can experience. However, the provision is not intended to impose any constraints on moral standards.
2. Section 86.31(b) (5) does not prevent an institution from imposing different standards of attire for students on the basis of sex as long as any such standards are based on criteria, such as neatness or modesty, which are applied equally to both sexes. As discussed with you, any requirements pertaining to hair length would have to be applied equally, absent a religious exemption.
3. Section 86.40 parallels Section 86.21(c); the latter covers discrimination on the basis of sex in admissions with respect to marital or parental status, and the former treats this issue after admission. Accordingly, the comments in item one above are also applicable here. If an institution wishes to regulate, on moral grounds, circumstances or conditions related to this Section, e.g. pregnancy outside of wedlock, it is free to do so without conflicting with Title IX as long as any such rules are applied and result in evenhanded treatment for members of both sexes. Recognition of the practical difficulties of administering such rules in an evenhanded manner gave rise to the language to which you object in your letter.
4. The comments contained in items one and three above also apply to Section 86.57.

Based on discussions with you, my staff has advised me of their understanding that BYU's Code of Honor, which is derived from religious tenets of the Church of Jesus Christ of Latter-Day Saints, provides for evenhanded treatment of the sexes. In those few instances where evenhanded treatment of employees and students would conflict with the religious tenets of the Church of Jesus Christ of Latter-Day Saints under Sections 86.21(c), 86.40 (b) (1) and (5) and 86.57(b), BYU is granted an exemption from those requirements.

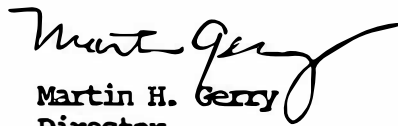


Page 3 - Mr. Dallin H. Oaks

It is our further understanding that religious tenets of the Church of Jesus Christ of Latter-Day Saints prohibit compliance with Section 86.31 (b) (5) with regard to hair length requirements. Accordingly, BYU is granted an exemption to this Section with regard to hair length requirements.

I appreciate the time and careful thought you have given to these issues. I hope that this letter accurately reflects our discussions and that we have achieved a full understanding of each other's views. Please feel free to contact me if we can be of further assistance.

Sincerely yours,

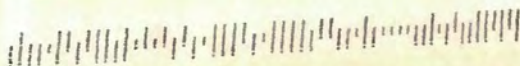
A handwritten signature in cursive script, appearing to read "Martin H. Gerry".

Martin H. Gerry  
Director  
Office for Civil Rights

HE GENET  
DUNG UN

84602

CERTIFIED MAIL



7020 0090 0000 4445 3547



PROVO UT 846  
MON 22 NOV 2021 AM

UNIVERSITY STATION CPU 84602  
NOV 19 2021  
USPS  
NOV 19 2021  
USPS  
NOV 19 2021  
USPS  
NOV 18/2021  
US POSTAGE \$05.20<sup>00</sup>  
ZIP 84602  
011011637768

UNIVERSITY STATION CPU 84602  
NOV 19 2021  
USPS  
NOV 19 2021  
USPS  
NOV 19 2021  
USPS  
NOV 18/2021  
US POSTAGE \$03.56<sup>00</sup>  
ZIP 84602  
011011637768




*Via Certified Mail*  
Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
UNITED STATES DEPARTMENT OF EDUCATION  
400 Maryland Avenue, SW  
Washington, D.C. 20202



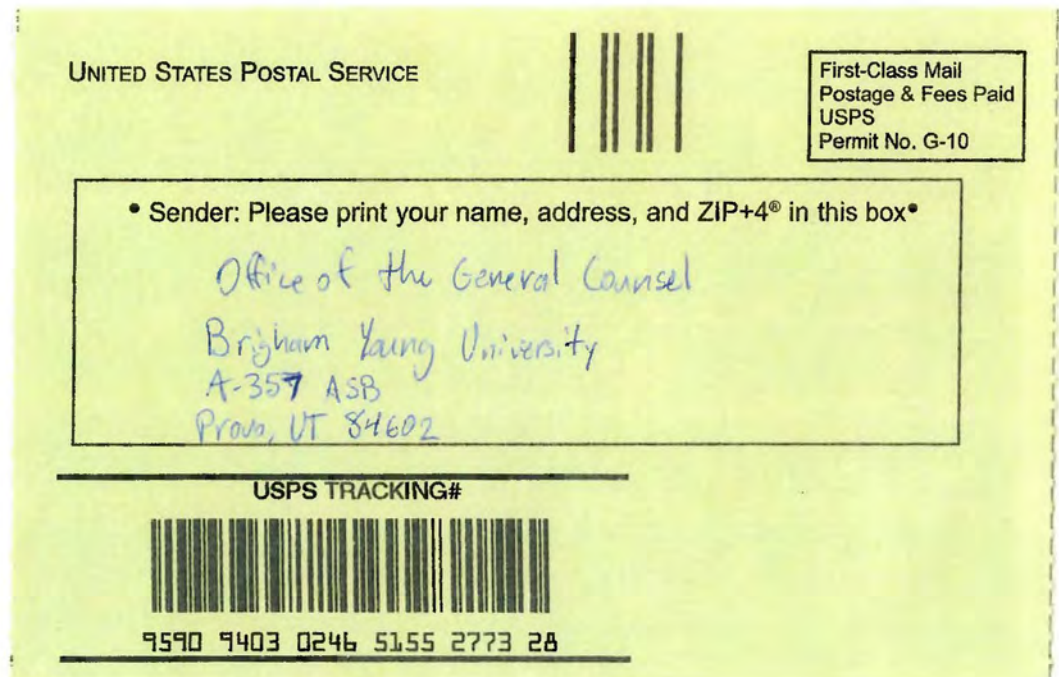
11/29/2021  
11/29/2021 10 16 AM

TO: PCP-OCR  
LOC1:  
LOC2:  
LOC3:

70200090000044453547

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature</p> <p><b>X</b></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p><i>Carlvin E. Lhamon</i> <i>Assistant Secretary for Civil Rights</i> <i>United States Dep of Education</i> <i>400 Maryland Avenue, SW</i> <i>Washington, D.C. 20202</i></p>  <p><b>9590 9403 0246 5155 2773 28</b></p>		<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p><b>7020 0090 0000 4445 3547</b></p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
PS Form 3811, April 2015 PSN 7530-02-000-9053		Domestic Return Receipt	









UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

January 3, 2022

Kevin J. Worthen, President  
Brigham Young University  
D-346 ASB  
Provo, Utah 84602-1346

Dear President Worthen:

I write in response to your November 19, 2021, letter to the U.S. Department of Education's Office for Civil Rights (OCR), in which you requested assurance of a religious exemption from Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, for Brigham Young University ("BYU") in Provo, Utah.

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX and its implementing regulations at 34 C.F.R. § 106.12 provide that Title IX does not apply to an educational institution controlled by a religious organization to the extent that the application of Title IX would be inconsistent with the controlling organization's religious tenets. Section 106.12(b) of the Department's Title IX regulations describe the process by which an educational institution may request assurance of a religious exemption. The request must identify the religious organization that controls the educational institution and specify the tenets of that organization and the provisions of the law or regulation that conflict with those tenets. Section 106.12(c) of the Department's Title IX regulations describes the evidence that is sufficient to establish that an educational institution is controlled by a religious organization.

Your letter states that "BYU is a religious institution of higher education, 'founded, supported, and guided by'" the Church of Jesus Christ of Latter-day Saints (Church of Jesus Christ). The letter explains that BYU is "'controlled by' the Church of Jesus Christ, whose governing leaders appoint prophets, apostles, general authorities, and offices of the Church of Jesus Christ as members of BYU's Board of Trustees." Your letter also explains that "a majority of BYU's operating budget is derived from appropriations from the Church of Jesus Christ." The letter also states that "BYU is part of the Church Educational System, which includes many other institutions and programs affiliated with the Church of Jesus Christ" and that BYU's mission is "'to assist individuals in their quest for perfection and eternal life' by 'provid[ing] an environment enlightened by living prophets and sustained by those moral virtues which characterize the life and teachings of the Son of God.'"

The letter further explains that “the common purpose of all education at BYU is to build testimonies of the restored gospel of Jesus Christ.” “All BYU students, faculty, administrators, and staff agree to the Church Educational System Honor Code and thereby ‘voluntarily commit to conduct their lives in accordance with the principles of the gospel of Jesus Christ.’”

Your letter explains that “the Church of Jesus Christ teaches that ‘all human beings—male and female—are created in the image of God,’ and that ‘the Church of Jesus Christ proclaims that marriage between a man and a woman is ordained of God and that family is central to the Creator’s plan for the eternal destiny of His children.’” The letter also states that “‘God has commanded that the sacred powers of procreation are to be employed only between man and woman, lawfully wedded as husband and wife,’ and ‘the means by which mortal life is created are divinely appointed.’” The Church Educational System Honor Code includes a “voluntary commitment by each BYU student and employee to ‘live a chaste and virtuous life.’” Your letter references a letter by Elder Johnson, a General Authority Seventy of the Church of Jesus Christ and then-current Commissioner of the Church Educational System, which states that “same-sex romantic behavior cannot lead to eternal marriage and is therefore not consistent with the principles included in the Honor Code.” BYU further explains that any obligation that would require it to “allow same-sex romantic behavior” or “contradict doctrine of the Church of Jesus Christ regarding the distinction between men and women, the eternal nature of gender, or God’s laws of chastity and marriage” would violate the religious tenets of the Church of Jesus Christ.

For the above reasons, BYU requests assurance of its exemption from the following regulatory provisions to the extent that those provisions are interpreted to prohibit discrimination based on sexual orientation or gender identity and application of those provisions would conflict with the religious tenets of its controlling religious organization:

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)
- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)
- 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 34 C.F.R. § 106.51-61 (relating to employment)

BYU is exempt from these provisions to the extent that application of these provisions conflict with the religious tenets of its controlling religious organization that pertain to sexual orientation and gender identity.

Please note that this letter should not be construed to grant exemption from the requirements of Title IX and the regulations other than as stated above. In the event that OCR receives a complaint against your institution, we are obligated to determine initially whether the allegations fall within the exemption here recognized. Also, in the unlikely event that a complaint alleges that the practices followed by an institution are not based on the religious tenets identified in your request, OCR may contact the controlling organization to verify those tenets. If the organization provides an interpretation of tenets that has a different practical impact than that described by the institution, or if the organization denies that it controls the institution, OCR will not recognize this exemption.

I hope this letter fully responds to your request. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Lhamon', with a stylized, flowing script.

Catherine E. Lhamon  
Assistant Secretary for Civil Rights



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD., SUITE 310  
DENVER, CO 80204-3582

REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

February 8, 2022

President Kevin J. Worthen  
Brigham Young University  
D-346 ASB  
Provo, UT 84602

Re: Brigham Young University  
OCR Case Number 08-20-2196

Dear President Worthen:

On March 9, 2020, the U.S. Department of Education's Office for Civil Rights (OCR) received a complaint alleging that Brigham Young University (the University) discriminates against students on the basis of sex. Specifically, the complaint alleged that the University engages in the different treatment of students who are involved in same-sex romantic relationships by stating that such relationships are not compatible with the principles of the University's Honor Code.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX. Title IX and its implementing regulation contain several exemptions and exceptions from its coverage. *See* 20 U.S.C. §§ 1681(a)(1)-(9); 34 C.F.R. §§ 106.11-106.15.

By letter dated October 21, 2021, OCR notified the University that it was opening an investigation into the complaint. By letter to the Assistant Secretary for Civil Rights dated November 19, 2021, the University requested an assurance of exemption from the application of Title IX and its implementing regulation to the complaint. By letter dated January 3, 2022, the Assistant Secretary for Civil Rights assured the University of its exemption from the following regulatory provisions to the extent that application of those provisions would conflict with the religious tenets of the University's controlling religious organization that pertain to sexual orientation and gender identity:

- 34 C.F.R. § 106.21 (admission)
- 34 C.F.R. § 106.22 (preference in admission)

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*



Page 2 – OCR Reference No. 08-20-2196

- 34 C.F.R. § 106.23 (recruitment)
- 34 C.F.R. § 106.31 (education programs or activities)
- 34 C.F.R. § 106.32 (housing)
- 34 C.F.R. § 106.33 (comparable facilities)
- 34 C.F.R. § 106.34 (access to classes and schools)
- 34 C.F.R. § 106.36 (counseling)
- 34 C.F.R. § 106.37 (financial assistance)
- 34 C.F.R. § 106.38 (employment assistance to students)
- 34 C.F.R. § 106.39 (health and insurance benefits and services)
- 34 C.F.R. § 106.40 (marital or parental status)
- 34 C.F.R. § 106.41 (athletics)
- 34 C.F.R. § 106.43 (standards for measuring skill or progress in physical education classes)
- 34 C.F.R. § 106.51-61 (relating to employment)

Because the University is exempt from the above-referenced regulatory provisions of Title IX to the extent that application of those provisions conflict with the religious tenets of its controlling religious organization, OCR lacks jurisdiction to address the complaint's allegations. Accordingly, OCR is dismissing this complaint pursuant to Section 108(f) of its *Case Processing Manual* as of the date of this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. OCR also would like to make the University aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

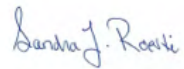
Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Page 3 – OCR Reference No. 08-20-2196

If you have any questions, you may contact [REDACTED] an OCR attorney assigned to this case, at [REDACTED]

Sincerely,

A handwritten signature in blue ink that reads "Sandra J. Roesti".

Sandra Roesti  
Supervisory Attorney

cc: David M. Andersen, University Counsel, Brigham Young University

Steven M. Sandberg, Assistant to the President and General Counsel, Brigham Young University